

Get on the Istanbul Express

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*This week's editorial has been written by our distinguished guest author **Andrew Arato**, Professor of Political and Social Theory at The New School in New York.*

There is a spectre haunting many regions of the world, that of authoritarian populism. Whatever its past, today populism, with its desire to embody popular sovereignty in a leader or (rarely) a group, speaking for a part of the population and demonizing other parts, is a threat not only to liberal but to all genuine democracy. Whether still only a movement, or already a government, we (namely democrats of different persuasions) have not yet developed effective strategies to dissolve this specter. But fortunately, there are signs of such a developing strategy, however partial and however unclear the outcomes.

In Budapest, shortly before local elections some of my friends now speak of the Istanbul Express. As readers know, in that enormous city followers of the slightly left Republican People's Party (CHP), of the Kurdish People's Democratic Party (HDP) and a small nationalist grouping, "the Good Party" united to defeat (twice!) the candidate of Erdogan's AKP. It seems that the Istanbul Express is indeed arriving in Budapest (and many provincial cities too), where most of the political parties did manage, using multi-party primaries, to unite around single candidacies to try to defeat the candidates of Viktor Orbán's FIDESZ.

The real stakes however are national elections, or the formation of national governments. Fortunately here too there are important signs of the emergence of anti-authoritarian democratic alternatives. The first came in Italy, given an opportunity provided by the mistakes of the authoritarian strongman, Matteo Salvini. Attempting to blow up the government for his electoral advantage, he provided the opening to unite for the center left (PD) and the left populist Five Star, hitherto irreconcilable enemies. If they govern badly of course, Salvini or someone like him will have an other chance to mobilize and win. The answer is to govern well: to deal with the challenge of mass immigration on the European level, to be loyally European, yet resist the austerity demands that still are part of the imposed constraints coming from Brussels and Frankfurt. The second sign is from the United Kingdom where a parliamentary „coalition” of Labor, Liberals, Scots, Plaid Cymru, a Green and dissident conservatives has so far stopped their demagogic populist PM in his tracks. This case however is even more difficult for democratic forces, because, unlike in Italy, an election can hardly be avoided. PM Johnson can lose in parliament over and over, and use these defeats to win an election. In the British first past the post electoral system, he needs perhaps 35% of the overall vote to thus succeed, indeed much less than Trump's total was and might be in the electoral college. Given the political divisions among his opponents Johnson may pull off this stunt. And so might Trump if the victory of either a moderate or a progressive causes too many defections or absentees.

The answer I strongly believe is to get on the Istanbul, or even better Rome Express. This would mean, in other words, to rely on uneasy alliances of different types of political forces loyal to political democracy, however difficult that may seem under quite different political circumstances. In the U.S. this would require first the open endorsement of a Democratic ticket by dissident Republicans, that would have to be organized after the primary challenges to Trump predictably lose. Second, it would involve the construction of a mixed ticket, and a platform drawing its elements from different current proposals. That would mean addressing the democracy, welfare and status deficits empowering populists of all stripes. Beyond constructing a platform that would have to be taken seriously in governing, in the US it matters greatly who the candidates are, and whether they are able to appeal to diverse constituencies. Thus a ticket with Biden at the top, should include Elizabeth Warren as the vice presidential nominee, and with Warren on the top must include a more moderate figure like K. Harris or C. Booker. Any of these politicians should see the strong rationale reason for such tactics, and my fear of Bernie Sanders, the only left populist in the race, stems in part from the fact that in his rather absurd call for “political revolution” he would not. Nor would he understand, unlike any of the others, the need for compromise in enacting progressive policies under the U.S. political design.

The election in the UK will come sooner, and will be more challenging from strategic and tactical points of view. Assuming however a common strategy for Democracy, the lessons of Istanbul, Budapest and Rome could be tactically applied in spite of the electoral system that would as things now stand punish the fragmentation of the parties that temporarily have united in Parliament. This would require creative leadership as well as self-limitation of all. But it could be done. My idea, applied to one and only one election, would have two parts. First the parties should declare, that their goal is a national unity government that will not only deal with Brexit, but will focus on the sources that have produced the populist challenge behind that disastrous idea, in the European elections and of course producing the Johnson phenomenon. Second, the parties should unite around each of the present MP's of the opposition, including the Tory dissidents now endangered, withdrawing the candidates that would fragment the anti-populist democratic vote. For the current seats of MPs (Conservative, UKIP or DUP) supporting Johnson, a single opposition candidate should be agreed upon, using both ability to win as a criterion as well as keeping more or less to the proportions of each party obtained in the last election of 2017 or, better still, in the European elections of this year. Since there is not time for the Hungarian solution of multi-party primaries, such a strategy would require something like an “opposition round table” that would have to be constructed as soon as an electoral date (hopefully after October 31) is agreed upon.

A similar doubt arises with Corbyn as with Sanders. Without Labor, that would have to sacrifice the most, no electoral deal will be possible. But so far, in the current constitutional crisis, Jeremy Corbyn has shown that he is capable of being a statesman. If he cannot, Labor must replace him. As for the 21 or so Tories last week, the issue should not be simply party or its ideology but country, in other words the viability of a British strategy for Democracy.

This week on Verfassungsblog

*Speaking of Istanbul: [CEM TECIMER](#) examines to which extent the common assessment is correct that President Erdogan has successfully packed the **Turkish** Constitutional Court.*

*In **Germany**, the ascent of authoritarian populism to power still appears to many a rather far-fetched idea. That such constitutional self-complacency is unwarranted and the Grundgesetz offers a lot less protection than many think is the outcome of a detailed scenario by [MAXIMILIAN STEINBEIS](#).*

*In the new **EU** Commission President Ursula von der Leyen team, Vera Jourova will be in charge of the rule of law portfolio – quite a clever move in the view of [DANIEL HEGEDÜS](#) to drive a wedge between the Visegrad states.*

*The **US** Supreme Court has issued a ruling about President Trump's intention to deny refugees at the Mexico border asylum by means of a "safe third country" rule. [JAMES C. HATHAWAY](#) is appalled by the fact that the Supreme Court refuses to consider that the US is bound by international law to non-refoulement, pushing scores of extremely vulnerable people into the arms of their persecutors.*

++++++A Note from MPIL++++++



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On Friday, 27 September 2019, the Max Planck Institute for Comparative Public Law and International Law is participating as an event partner in the European Researchers' Night Heidelberg I Mannheim.

The highlight of the evening will be a panel discussion from 7 pm to 8.30 pm: Was Europa ausmacht: Werte, Strategien, Risiken – with Armin von Bogdandy, Iris Canor, Achilles Skordas, Luke Dimitrios Spieker and Silvia Steininger, moderated by Alexandra Kemmerer.

The complete programme can be found [here](#).

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*Volunteer ships who rescue refugees from drowning in the Mediterranean Sea have been denied entry into Italian and Maltese ports – but also **Germany's** policy towards rescue ships is less commendable than many would like to think, as [NASSIM MADJIDIAN](#) has observed on the occasion of a recent administrative court ruling in that matter.*

In **Norway**, an experiment about the effects of fake news may have compromised the municipal elections nation-wide. In the view of [EIRIK HOLMØYVIK](#), this affair accentuates the need for electoral reform.

In the **German** capital Berlin, parts of the local government plan to fight exploding costs of living by means of a very strict cap to residential rents. [BERTRAM LOMFELD](#) analyses if this is indeed as scandalous an attack on the constitutionally protected right to private property as some claim it is.

Finally, our 10 years anniversary post by [KRISZTA KOVÁCS](#) and [GÁBOR ATTILA TÓTH](#) looks back on the initial encounter of Verfassungsblog and the case of Hungary.

This week elsewhere

[ALAN GREENE](#) fears that the non-justiciability approach taken by the High Court of England and Wales with respect to prorogation of the **UK** Parliament creates a dangerous legal black hole. [ROBERT HAZELL](#) and [NABILA ROUKHAMIEH-MCKINNA](#) explain that the Fixed-Term Parliament Act is a lot less to blame for the current mess than some believe. [TOM HICKMAN](#) asks if the stern rules of Parliament for the use of pictures from its floor can be sustained in such times of supine memeifiability as displayed by the Leader of the House last week. [ROBERT CRAIG](#) argues that the Prime Minister might rather resign than send an Article 50 extension letter to Brussels and explains what would happen next. [OLIVER GARNER](#) highlights the fact that a no-deal Brexit could still happen if the European Council offers an extension to a date other than 31 January 2020.

[SIMONA FLORESCU](#) discusses the ECtHR approach towards the rights of parents whose children were placed in foster care on the occasion of a **Spanish** case.

[JAVIER GARCÍA OLIVA](#) and [RAFAEL VALIM](#) compare what the law does to keep politicians from making discriminatory statements in the **UK** and in **Brazil**, respectively.

[TOM BOEKESTEIN](#) asks why **EU** law treats the unity of multi-national families more favorably than ECHR law.

[MARIUSZ JALOSZEWSKI](#) has interviewed one of the judges in **Poland** who are targeted by the PiS government for fighting back against the encroachment upon judicial independence.

[IRINA MANTA](#) and [JOHN LANGFORD](#) report how **US** President Trump's war on immigrants doesn't even stop at naturalized citizens.

